

TUESDAY, MAY 7, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Shawkat Mahmoud Harb, 48943; CTSI Corporation, 80346; Mohamad Shawkat Harb, 57631; Shawkat Mahmoud Harb & Jeanmaire C. Ornelas, 48931; and Reuben David Chudy, 15520.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board made the following orders:

Jose Luis Arredondo, 51457

1-1-96 to 12-31-98, \$110,354.91 Tax

\$27,588.76 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Critters, Inc., 89000048100

4-1-95 to 3-31-98, \$49,180.73 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Larry Brown Lithographers, Inc., 61854

4-1-96 to 6-30-99, \$9,704.48 Tax

Action: Redetermine as recommended by the Appeals Section.

S.H.H., 89000094250

1-1-95 to 3-31-98, \$51,295.55 Tax

\$12,823.90 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Alfonso and Ofelia Olivares, 87621

4-1-97 to 12-31-99, \$15,087.60 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Shawkat Mahmoud Harb, 48943

4-1-95 to 2-5-98, \$77,802.72 Tax

\$7,742.62 Penalty, Negligence

Action: The Board deferred consideration of this matter.

TUESDAY, MAY 7, 2002

CTSI Corporation, 80346

4-1-96 to 12-31-98, \$00.00 Tax

Action: The Board deferred consideration of this matter.

Philip H. Reid Living Trust, 93121

8-31-99, \$1,550.00 Tax

\$155.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Kalstamp Industries, Inc., 105721

6-1-97 to 12-31-99, \$1,798.93 Tax

Action: Redetermine as recommended by the Appeals Section.

Mohamad Shawkat Harb, 57631

2-6-98 to 3-8-98, \$1.00 or more Claim for Refund

Action: The Board deferred consideration of this matter.

Shawkat Mahmoud Harb & Jeanmaire C. Ornelas, 48931

3-9-98 to 12-31-98, \$11,226.42 Tax

\$1,111.04 Penalty, Negligence

Action: The Board deferred consideration of this matter.

Danny To and Kenny Xai Wong, 80221

4-1-97 to 12-31-99, \$18,464.14 Tax

\$1,846.43 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Matevos Tsarukyan, 89002269190

1-1-87 to 12-31-89, \$50,158.18 Tax

\$12,539.64 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Joseph J. Tavares, 89002332540

1-1-94 to 12-31-97, \$100,636.34 Tax

\$25,159.09 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Kenny Otume, 62360

8-15-95 to 6-1-98, \$197,632.46 Tax

\$49,408.15 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

TUESDAY, MAY 7, 2002

James T. and Julie Aspinall, 42596

4-1-96 to 3-31-99, \$27,683.99 Tax

Action: Redetermine as recommended by the Appeals Section.

Mark's CPA Review, Inc., 86879

7-1-96 to 6-30-99, \$31,705.88 Tax

Action: Redetermine as recommended by the Appeals Section.

Scott Mednick & Associates, Inc., 89000020610

1-1-94 to 12-31-96, \$70,620.57 Tax

Action: Redetermine as recommended by the Appeals Section.

Richard Alan Mancuso and Frankie Lee McWhirt, Jr., 82945, 104575

4-1-95 to 6-30-98, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Amisub Irvine Medical Center, Inc., 56567

10-1-95 to 12-31-98, \$68,109.12 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

Patrick M. Matthews, 101075

11-30-96, \$14,350.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Riverside Beacon, Inc., 93444

1-1-97 to 1-18-00, \$2,832.14 Tax

Action: Redetermine as recommended by the Appeals Section.

Pennzoil-Quaker State Company, 31715

1-1-93 to 12-31-95, \$00.00 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Lee R. Rozier, 106436

10-26-98, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

The Bigge, Inc., 162757

10-26-98, \$18,400.00 Tax

Action: Redetermine as recommended by the Appeals Section.

TUESDAY, MAY 7, 2002

Reuben David Chudy, 15520

1-1-92 to 12-31-97, \$244,837.30 Tax

\$61,209.43 Penalty, Fraud

\$4,691.71 Penalty, Failure to File

Action: The Board deferred consideration of this matter.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

Action: (Motion expunged.)

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board made the following orders:

Lillian S. Butler, 134164

1997, \$1.00 or more Claim for Credit

1998, \$1.00 or more Claim for Credit

Action: The Board dismissed this appeal for lack of jurisdiction.

Ernestine Allen, 135293

201, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Malka Rivkina, 139128

2000, \$49.80 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Angela Compos, 140223

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Indearrea Lee, 141485

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Thuong H. Pham, 141554

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

TUESDAY, MAY 7, 2002

Annette Perry, 141944

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Erin Pickett, 141966

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

M. Antonia Fuentes, 143593

2001, \$250.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Josephine M. Henley, 118301

2000, \$600.00 Claim for Credit

Action: Deny the petition for rehearing.

Barbara J. Williams, 127019

1999, \$600.00 Claim for Credit

Action: Deny the petition for rehearing.

Igale Shadian, 129775

1999, \$1.00 or more Claim for Credit

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, Mr. Chiang not participating in *Peoplesoft, Inc.*, 60420, the Board made the following orders:

Magnetic Land Inc., 164245

9-18-95 to 9-18-95, \$99,999.81

Action: Approve the credit and cancellation as recommended by staff.

James Alan Story, 164186

1-1-00 to 12-31-00, \$92,081.62

Action: Approve the credit and cancellation as recommended by staff.

Graphic Orb, Inc., 77013

1-1-97 to 12-31-99, \$231,519.72

Action: Approve the refund as recommended by staff.

TUESDAY, MAY 7, 2002

Ambitech, Inc., 163446

10-1-00 to 9-30-01, \$69,006.11

Action: Approve the refund as recommended by staff.

Rebar Engineering, Inc., 164124

4-1-98 to 3-31-01, \$115,659.22

Action: Approve the refund as recommended by staff.

Rocuant Corporation, 34381

7-1-96 to 12-31-99, \$216,610.81

Action: Approve the refund as recommended by staff.

CHW West Bay, 162579

7-1-97 to 6-30-00, \$147,128.98

Action: Approve the refund as recommended by staff.

Herning Enterprises, Inc., 138876

7-1-99 to 6-30-01, \$214,835.55

Action: Approve the refund as recommended by staff.

Peoplesoft, Inc., 60420

1-1-97 to 9-30-00, \$405,897.89

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Legato Network Services, Inc., 135658

4-1-00 to 6-30-00, \$130,610.21

Action: Approve the refund as recommended by staff.

A & B Process Systems Corporation, 59763

7-1-99 to 12-31-99, \$95,745.14

Action: Approve the refund as recommended by staff.

Communications Test Design, Inc., 118722

1-1-98 to 9-30-00, \$148,038.01

Action: Approve the refund as recommended by staff.

Streater, Inc., 77028

10-1-99 to 4-23-00, \$58,982.67

Action: Approve the refund as recommended by staff.

Systems Union, Inc., 27835

1-1-98 to 6-30-00, \$51,821.63

Action: Approve the refund as recommended by staff.

TUESDAY, MAY 7, 2002

Amwest Insurance Group, Inc., 51291

10-1-96 to 12-31-00, \$55,360.15

Action: Approve the refund as recommended by staff.

Interwoven, Inc., 132206

7-1-00 to 9-30-00, \$262,353.00

Action: Approve the refund as recommended by staff.

CYRK Acquisition Corporation, 142935

4-1-01 to 6-30-01, \$92,637.68

Action: Approve the refund as recommended by staff.

The Coleman Group, LLC, 101162

1-1-99 to 12-31-00, \$100,019.22

Action: Approve the refund as recommended by staff.

Pacific Marine Maintenance Co., LLC, 113317

11-8-99 to 12-31-00, \$68,939.88

Action: Approve the refund as recommended by staff.

Goldwell/KMS West LLC, 132195

4-1-00 to 3-31-01, \$99,469.22

Action: Approve the refund as recommended by staff.

Pactuco Acquisition, Inc., 129885

10-1-00 to 10-31-00, \$71,642.14

Action: Approve the refund as recommended by staff.

Metricom DC, LLC, 141911

4-1-01 to 6-30-01, \$122,255.20

Action: Approve the refund as recommended by staff.

Circuit City Stores West Coast, Inc., 163424

10-1-97 to 3-31-98, \$401,739.94

Action: Approve the refund as recommended by staff.

Portal Publications Ltd., 165266

1-1-98 to 12-31-00, \$139,122.03

Action: Approve the refund as recommended by staff.

Portal Publications Ltd., 115650

1-1-98 to 6-30-01, \$381,101.46

Action: Approve the refund as recommended by staff.

TUESDAY, MAY 7, 2002

MRT Tecnology LLC, 134737

7-1-00 to 12-31-00, \$4,177,103.37

Action: Approve the refund as recommended by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that its previous motion which approved the Corporate Franchise and Personal Income Tax Matters, Consent Agenda be expunged.

The Board deferred consideration of the following matters: *Julie Goldberg Botvin and Estate of Melvin Botvin, 136828* and *Raymond H. and Margarey R. Berner, 88344*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

Paul (Estate of) and Dorothy Setzer, 92217

1990, \$61,336.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Eric H. Johnsen, 106690

1998, \$2,308.00 Tax

\$577.00 Penalty, Late Filing

\$586.25 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Merlin W. Saunders, 118623

1998, \$1,954.00 Tax

\$488.50 Penalty, Delinquent Filing

\$488.50 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Winfred Earl Powell, 131765

1997, \$252.00 Tax

Action: Sustain the modified action of the Franchise Tax Board.

TUESDAY, MAY 7, 2002

Arleen Amaya, 135252

1997, \$529.12 Tax

Action: Sustain the action of the Franchise Tax Board.

Julie Goldberg Botvin and Estate of Melvin Botvin, 136828

1988, \$10,665.61 Claim for Refund

1989, \$4,192.00 Claim for Refund

1990, \$2,986.00 Claim for Refund

1991, \$3,065.00 Claim for Refund

1992, \$3,065.00 Claim for Refund

1993, \$1,727.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Dorothy Eakings, 139376

1997, \$514.94 Tax

Action: Sustain the action of the Franchise Tax Board.

Gay W. Ng, 140900

2000, \$2.63 Claim for Refund

\$22.26 Penalty, Underpayment of Estimated Tax

\$24.20 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board.

Robert and Geri Andrew, 141590

1997, \$357.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John W. English, 87446

1990, \$62,708.00 Assessment

1991, \$109,173.00 Assessment

1992, \$129,971.00 Assessment

Action: Deny the petition for rehearing.

Raymond H. and Margarey R. Berner, 88344

1986, \$95,691.00 Tax

\$23,922.75 Penalty, Failure to File

1987, \$313,649.00 Tax

\$78,423.50 Penalty, Failure to File

1988, \$49,672.00 Tax

\$3,932.90 Penalty, Negligence

Action: The Board deferred consideration of this matter.

TUESDAY, MAY 7, 2002

Judy A. Marshall, 102186

1998, \$291.00 Tax

\$100.00 Penalty, Delinquent Filing

\$72.75 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Timothy Kelly, 102706

1994, \$582.00 Claim for Refund

Action: Deny the petition for rehearing.

Patricia Soulsburg, 104906

1998, \$1,211.00 Tax

\$302.75 Penalty, Late Filing

Action: Deny the petition for rehearing.

David L. Wiitala, 109486

1998, \$3,020.00 Tax

\$726.00 Penalty, Late Filing

\$1,136.50 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Glen A. Blair, 115255

1997, \$2,282.00 Tax

1988, \$2,485.00 Tax

\$621.25 Penalty, Late Filing

\$621.25 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

**SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES,
CONSENT**

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

City and County of San Francisco, 91375

4-1-96 to 3-31-99, \$2,038,521.03

Action: Approve the redetermination as recommended by staff.

Port of Oakland, 91437

4-1-97 to 9-30-97, \$804,375.00

Action: Approve the redetermination as recommended by staff.

TUESDAY, MAY 7, 2002

Rohr, Inc., 49165

10-1-94 to 12-31-97, \$172,339.43

Action: Approve the redetermination as recommended by staff.

Herff Jones, Inc., 130260

1-1-97 to 12-31-99, \$132,079.77

Action: Approve the redetermination as recommended by staff.

Alcon Laboratories, Inc., 116738

4-1-96 to 3-31-99, \$68,687.63

Action: Approve the redetermination as recommended by staff.

Rational Software Corporation, 130255

1-1-97 to 12-31-99, \$197,361.76

Action: Approve the redetermination as recommended by staff.

Hacoba Textile Machinery LP, 56268

10-1-94 to 12-31-98, \$72,383.40

Action: Approve the redetermination as recommended by staff.

Bausch & Lomb Surgical, Inc., 138582

7-1-96 to 6-30-99, \$103,104.29

Action: Approve the redetermination as recommended by staff.

Ardeshir Eil Larijani, 76272

2-1-96 to 6-30-99, \$55,424.68

Action: Approve the redetermination as recommended by staff.

Apple Computer, Inc., 162832

10-1-01 to 10-31-01, \$105,938.64

Action: Approve the relief of penalty as recommended by staff.

Atome. Net, 162861

9-28-01 to 9-30-01, \$75,189.12

Action: Approve the relief of penalty as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, and Mr. Parrish voting yes, Mr. Andal absent, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

TUESDAY, MAY 7, 2002

The Stroh Brewery Company, 161329

7-1-97 to 10-21-99, \$162,093.96

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

ADMINISTRATIVE MATTER

ADMINISTRATIVE MATTER, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

Action: Approved the Tobacco Products Tax Rate for 2002-03. (Exhibit 5.1)

Exhibits to these minutes are incorporated by reference.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 9:15 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss *Marriott Corporation v. State Board of Equalization*, Los Angeles Superior Court Case No. BC253531 (Government Code section 11126 (e)) and personnel matters.

The Board recessed at 9:20 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Marc S. Feldman, 130126

1996, \$19,808.00 Assessment

1997, \$12,639.89 Assessment

For Appellant:

Marc S. Feldman

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellant has established that he is entitled to equitable innocent spouse relief from unpaid, self assessed tax.

TUESDAY, MAY 7, 2002

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Thomas J. Gumina, 91411

1982, \$7,405.00 Assessment

For Appellant: Diana Roché

For Franchise Tax Board: Jean Cramer, Supervising Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the proposed assessment was issued prior to expiration of the applicable statute of limitations.

Whether appellant has met his burden to prove error in either the proposed assessment, or the federal action on which it is based.

Whether interest should be abated.

Appellant's Exhibit: Letter from Physician (Exhibit 5.2)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision. The Board directed the Appeals Section to bring the matter back to the Board on May 8, 2002 with a final recommendation.

In the Club, Inc., 132292

1999, \$7,154.61 Claim for Refund

\$7,086.81 Penalty, Late Payment

Pure Class, Inc., 133843

1999, \$5,664.39 Claim for Refund

\$5,663.46 Penalty, Late Payment

For Appellant: Andrew P. Hillas, CPA

Charles P. Rettig, Attorney

For Franchise Tax Board: Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the late payment penalty imposed pursuant to Revenue and Taxation Code section 19132 should be abated for reasonable cause.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Jerry Mash, 140895

1998, \$252.00 Assessment

For Appellant: Jerry Mash

For Franchise Tax Board: Jean Cramer, Supervising Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

TUESDAY, MAY 7, 2002

Issues: Whether appellant has shown that respondent's proposed assessment, based on a 1998 federal adjustment, is erroneous.
Whether appellant has shown that interest should be abated.
Whether the proposed tax assessment may be abated based on financial hardship.
Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision. The Board directed the Franchise Tax Board to offer a generous payment plan.

Richard Parissi, 115055

1997, \$647.25 Tax

\$161.81 Penalty, Delinquent Filing

For Appellant: Richard Parissi
Paul Ballmer, Advisor

For Franchise Tax Board: Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant has demonstrated that the proposed assessment is invalid.
Whether appellant has demonstrated that the delinquent filing penalty should be abated.
Whether the Board has jurisdiction to consider appellant's appeal of the "frivolous return" penalties imposed by respondent.
Whether appellant has maintained a frivolous or groundless position before the Board.

Appellant's Exhibit: Miscellaneous Documents (Exhibits 5.3)

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Stanley D. Kaye, 118471

1998, \$2,102.00 Tax

\$525.50 Penalty, Late Filing

\$528.25 Penalty, Notice and Demand

For Appellant: Stanley Kaye
For Franchise Tax Board: Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant has demonstrated error in respondent's assessment
Whether respondent properly imposed penalties for late filing and failure to file upon demand.

Whether a frivolous appeal penalty is appropriate.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.4)

Respondent's Exhibit: Collection Information (Exhibit 5.5)

TUESDAY, MAY 7, 2002

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Larry L. and Kathy L. Vandermoon, 92235

1994, \$2,105.00 Tax

\$421.00 Penalty, Accuracy-Related

1995, \$1,357.00 Tax

\$271.40 Penalty, Accuracy-Related

For Appellant: Larry L. Vandermoon

For Franchise Tax Board: Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellants have met their burden to prove error in the proposed assessments, or the underlying federal actions.

Whether the accuracy-related penalties were correctly assessed and if so, whether relief should be granted.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Hearing Summary of Larry Vandermoon (Exhibit 5.6)

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Richard L. Pessler, Jr., 119149

1997, \$739.00 Assessment

For Appellant: No Appearance

For Franchise Tax Board: Margalo Weissman, Tax Counsel

Action: The Board took no action.

TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM HEARING**Chas L. Lewis, Inc., 140577**

6-30-92, \$1.00 or more Claim for Reimbursement

6-30-98, \$1.00 or more Claim for Reimbursement

For Appellant: Stanley Lewis, President

For Franchise Tax Board: Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether claimant has shown that it is entitled to reimbursement for fees incurred in pursuing a refund.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the claim for reimbursement be submitted the for decision.

TUESDAY, MAY 7, 2002

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Michael A. and Dawn A. Barry, 135769

1997, \$2,750.00 Assessment

For Appellant:

Waived Appearance

For Franchise Tax Board:

Jean Cramer, Supervising Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellants have met their burden to prove error in the proposed assessment, or the federal action that it is based on.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON APPEALS HEARD MAY 7, 2002

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Marc S. Feldman*, 130126, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, in the appeal of *In the Club, Inc.*, 132292, and *Pure Class, Inc.*, 133843, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Jerry Mash*, 140895, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Richard Parissi*, 115055, the Board sustained the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeals penalty.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Larry L. and Kathy L. Vandermoon*, 92235, the Board sustained the action of the Franchise Tax Board and impose a \$1,500.00 frivolous appeals penalty.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Stanley D. Kaye*, 118471, the Board sustained the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeals penalty.

TUESDAY, MAY 7, 2002

FINAL ACTION ON CLAIM HEARD MAY 7, 2002

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the matter of *Chas L. Lewis, Inc.*, 140577, the Board ordered that the claim for reimbursement be denied.

The Board recessed at 10:50 a.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS**Event Works, Inc., 49884**

1-1-96 to 12-31-98, \$27,393.41 Claim for Refund

For Petitioner: Ted Bowers, Vice President
Robert H. Schneider, CPA

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether claimant has met its burden of establishing that it is entitled to adjustments in the measure of tax for dismantling of property and for picking up its property from the customer location

Whether petitioner received and relied on erroneous advice under Revenue and Taxation Code section 6596.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 1:50 p.m. and reconvened at 2:00 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

Allsport Photography U.S.A., Inc., 41088

10-1-95 to 6-30-98, \$23,136.78 Tax

\$00.00 Penalty

\$23,136.78 Penalty, Failure to Timely Pay

For Petitioner: Scott Norton, Senior Manager
Linda S. Dawson, CPA

For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the Department's audit method for the test of sales was proper and whether taxpayer's lease of slides to Aminco Pins should be removed from the taxable measure.

Whether taxpayer is liable for use tax on its purchases of film from International Supplies.

Whether the finality penalty should be abated.

TUESDAY, MAY 7, 2002

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM HEARING

Kathleen R. Janiszewski, 138859

1999, \$530.00 Claim for Reimbursement

For Petitioner: Waived Appearance

For Franchise Tax Board: Margalo Weissman, Tax Counsel

Issues: Whether claimant is entitled to reimbursement of fees and expenses when the appeal was dismissed prior to respondent filing its brief setting forth its position in the case.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the claim for reimbursement be denied.

BUSINESS TAXES APPEALS HEARINGS

Kevork Mahserejian, Antranik Mahserejian, and George Mahserejian, 91751

10-1-96 to 9-30-99, \$66,136.48 Tax

\$00.00 Penalty, Negligence

For Petitioner: Maher Der Ohanessian, E.A.

For Sales and Use Tax Department: Richard Goodrich, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence is sufficient to show that audited taxable parts purchases are excessive.

Whether the evidence shows that the audited markup of 35 percent is excessive.

Whether disallowed exempt sales have been duplicated in the audit

computations.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Department.

TUESDAY, MAY 7, 2002

Rodney Nardi and John Kaleel, 55870

4-1-95 to 3-31-97, \$29,128.97 Tax

\$2,912.92 Penalty, Negligence

Hollywood at the El Rey, Inc., 55875

4-1-97 to 3-31-98, \$34,437.51 Tax

\$3,443.76 Penalty, Negligence

For Petitioner:

Rodney Nardi

Ian Foster

Michael R. Morris, Attorney

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the available evidence supports an increase in the audited pour size for liquor.

Whether the evidence supports an increase in the estimated amount of shrinkage.

Whether the evidence supports additional adjustments for theft by the former partner.

Whether an increase is warranted in the audited cost of self-consumed merchandise.

Whether adjustments are warranted based on alleged errors in the Department's description of the business operating conditions.

Whether the audit results are reasonable in light of petitioner's lifestyle.

Whether relief is warranted from the 10 percent penalties added for negligence.

Michael R. Morris, Attorney, requested to have the Pre-hearing Exhibits 2 - 8 entered into the record.

Petitioner's Exhibit: Pre-hearing Exhibits 2 - 8 (Exhibit 5.7)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the disputed measure of tax be reduced by 10 percent.

Basim Jawad Ridha, 75690

10-1-95 to 12-31-98, \$9,538.82 Tax

\$00.00 Penalty, Negligence

For Petitioner:

Dean Hakkak, Attorney

Basim Jawad Ridha

For Sales and Use Tax Department: Richard Goodrich, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the evidence supports a reduction in the audited amount of taxable sales.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

TUESDAY, MAY 7, 2002

The Board recessed at 3:05 p.m. and reconvened at 3:10 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

FINAL ACTION ON PETITIONS HEARD MAY 7, 2002

Mr. Klehs moved to grant in the petition of *Event Works, Inc., 49884*. The motion failed for a lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal not participating, the Board ordered that the petition, be redetermined as recommended by the Appeals Section.

Mr. Andal moved to grant in the petition of *Allsport Photography U.S.A., Inc., 41088*. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs, Mr. Chiang and Ms. Mandel voting no.

Mr. Klehs moved to redetermine. The motion failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered the finality penalty be deleted and the disputed measure of tax be reduced by 10 percent.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Basim Jawad Ridha, 75690*, be redetermined as recommended by the Appeals Section.

The Board adjourned at 3:15 p.m.

The foregoing minutes are adopted by the Board on June 20, 2002.

TUESDAY, MAY 7, 2002